IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EDEN FOODS, INC. (a Michigan corporation) Plaintiff vs. SUNNY SKY PRODUCTS, LLC (a Delaware limited liability company) Defendant	Civil Action No. __-______

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COMPLAINT FOR TRADEMARK
INFRINGEMENT, UNFAIR COMPETITION,
TRADE NAME INFRINGEMENT
AND TRADEMARK DILUTION

(1) This complaint asserts claims for trademark infringement, unfair competition, trade name infringement, and trademark dilution by tarnishment arising under the Federal Trademark Act, 60 Stat. 427, 15 U.S.C. § 1051 *et seq*., and the common law of the State of Michigan. The matter in controversy exceeds the sum or value of Seventy-Five Thousand Dollars ($75,000).

(2) This Court has jurisdiction of the subject matter and the parties under § 39 of the Federal Trademark Act, 15 U.S.C. § 1121, and the Judicial Code, 28 U.S.C. §§ 1331, 1332, 1338 and 1367.

(3) Eden Foods, Inc., is a corporation organized under the laws of the State of Michigan, having its principal place of business at 701 Tecumseh Road, Clinton, Michigan 49236.

(4) On information and belief, Defendant Sunny Sky Products, LLC is a Delaware limited liability company ("Sunny Sky") with offices at 11747 Windfern Road, Suite 100, Houston, Texas, 77064.

(5) On information and belief, Defendant Sunny Sky is the company that is engaging in the advertising, promotion, distribution, offering for sale, and sale of a variety of food and beverage products under the trademark EDEN in interstate commerce, including in the State of Michigan.

(6) Defendant Sunny Sky is subject to the personal jurisdiction of this Court pursuant to Mich. Comp. Laws §§ 600.705(1) and 600.705(2) by virtue of transacting business and causing tortious injury in the State of Michigan, respectively, as alleged more fully below.

(7) Venue in this Judicial District is proper under 28 U.S.C. § 1391.

COUNT I - TRADEMARK INFRINGEMENT

(8) As a cause of action and ground for relief, Plaintiff alleges that Defendant is engaged in acts of trademark infringement under the § 32(1) of the Federal Trademark Act, 15 U.S.C. § 1114(1), and at common law, and incorporates by reference ¶¶ (1) through (7) of the complaint as a part of this count.

(9) Long prior to the acts complained of herein, Plaintiff commenced use of the inherently distinctive word EDEN, alone and in combination with other words and/or a distinctive designs, as a trademark in the United States for a wide variety of food products, including natural and organic foods and beverages, and Plaintiff has continuously used said

mark on or in connection with such goods, and in the advertising and sale thereof, in interstate commerce since as early as 1967.

(10) Plaintiff's EDEN food and beverage products are sold throughout the United States through a variety of retail outlets including, but not limited to, national and regional supermarket chains, local grocery stores, food cooperatives, health food stores, convenience stores and department stores. Plaintiff's EDEN products are also available through mail order outlets and via the Internet through Plaintiff's website accessible at <edenfoods.com> and other online retailers.

(11) A very large percentage of Plaintiff's EDEN food and beverage products are certified as Kosher and display the Circle K certification mark.

(12) Plaintiff extensively advertises and promotes its EDEN food and beverage products through a variety of means including printed publications, distribution of printed promotional materials and via the Internet and social media. Plaintiff's EDEN food and beverage products also are the subject of a large amount of gratuitous, positive publicity.

(13) Plaintiff's annual sales of EDEN food and beverage products in the United States have exceeded One Hundred Million Dollars ($100,000,000) for a number of years, and Plaintiff has spent substantial sums in advertising such products.

(14) Plaintiff has assiduously and successfully policed its trademark rights in the EDEN name before Federal District Courts and the Trademark Trial and Appeal Board for many decades.

(15) As a result of Plaintiff's extensive and substantial advertising and sales of food and beverage products under the trademark EDEN and the maintenance of premium quality standards relating thereto, said mark is well and favorably known to the general public

throughout the United States as a distinctive indication of origin and had become a famous mark long prior to Defendant's first use of the trademark EDEN, which is the subject of this civil action

(16) Plaintiff duly registered EDEN as a trademark for the following food and beverage products in the USPTO under Registration No. 1,452,337, which issued August 11, 1987, and has been duly renewed:

- Pickled plums; processed and unprocessed dried fruits; processed nuts; processed seeds; vegetable oils; namely, olive oil, safflower oil, sesame oil; and snack foods consisting of processed nuts, processed seeds and dried fruits.

- Processed grains, namely, wheat flour, buckwheat flour, millet flour, rice flour, rye flour; pasta, namely, wheat noodles, wheat and spinach noodles, wheat and buckwheat noodles; soy sauce; barley malt syrup for table use; vinegar; mustard; tomato based spaghetti sauce; sea salt for table use; beverage consisting of tea and herbs.

- Unprocessed beans, namely, aduki, black turtle beans, kidney beans, great northern beans, green lentils, navy beans, pinto beans, soy beans; unprocessed peas, namely, chickpeas; unprocessed nuts; unprocessed edible seeds; unprocessed grains, namely barley, rice, wheat, buckwheat and millet; unprocessed corn and unpopped popcorn; and unprocessed sea vegetables, namely sea weed.

(17) Plaintiff duly registered EDEN as a trademark for the following food products in the USPTO under Registration No. 1,862,634, which issued November 15, 1994, and has been duly renewed:

- Vegetable oils, crushed tomatoes, sauerkraut, and processed can beans.

- Pasta; pizza sauce; teas; crackers; chips; misos; and condiments; namely, mustard, sea salt, processed sesame seeds, garlic pastes, furikake, pickled beefsteak leaf powder, bonito flakes, pickled ginger, tekka, wasabi powder, tamari, and shoyu.

- Unprocessed grains; namely, barley, wheat, and quinoa.

(18) Plaintiff duly registered EDEN as a trademark for fruit butter, fruit sauce and fruit juice, in the USPTO under Registration No. 2,229,053, which issued March 2, 1999, and has been duly renewed.

(19) Plaintiff duly registered EDEN ORGANIC & Fern Design as a trademark for the following food and beverage products in the USPTO under Registration No. 2,272,652, which issued August 24, 1999, and has been duly renewed:

- Vegetable oils; processed vegetables; processed nuts; processed edible seeds; processed mixture consisting of any combination of fruits, nuts and seeds; and dried fruits.

- Rice; pasta and noodles; breakfast cereals; syrup for table use; mustard; vinegar; sauces, namely, pizza and spaghetti sauces, soy sauce; processed grains; and seasonings, namely, processed sesame seeds.

(20) Plaintiff duly registered EDEN as a trademark, for dietary food supplements, namely, orally ingested enzymes beneficial to human intestinal bacteria, in the USPTO under Registration No. 2,360,206, which issued June 20, 2000, and has been duly renewed.

(21) Plaintiff duly registered EDEN as a trademark, for dietary food supplements, namely, edible kombu root seaweed and ume plum concentrate, in the USPTO under Registration No. 2,503,977, which issued November 6, 2001, and has been duly renewed.

(22) Plaintiff duly registered EDEN as a trademark, for processed popcorn for popping, in the USPTO under Registration No. 2,977,773, which issued July 26, 2005, and has been duly renewed.

(23) Plaintiff duly registered EDEN FOODS as a trademark for the following food and beverage products in the USPTO under Registration No. 3,071,337, which issued March 21, 2006, and has been duly renewed:

- Vegetable oils; processed vegetables; soybean based food beverages; soybean based misos; nut and fruit butters; processed nuts; processed edible seeds; processed mixture consisting of any combination of fruits, nuts and seeds; and vegetable chips and dried fruits.

- Tea; sugar; rice; pasta and noodles; flour; breakfast cereals; honey; syrup for table use; candy; salt; mustard; vinegar; sauces, namely, pizza and spaghetti sauces, soy sauce; processed grains; rice and grain based food beverages; herbal food beverages; seasonings, namely, processed sesame seeds, garlic pastes, furikake, pickled beefsteak leaf powder, bonito flakes, pickled ginger, tekka, wasabi powder; crackers; brown rice chips; and granola.

(24) Plaintiff duly registered EDEN as a trademark, for dried cherries, in the USPTO under Registration No. 3,102,575, which issued June 13, 2006, and has been duly renewed.

(25) Plaintiff duly registered EDEN as a trademark in the USPTO under Registration No. 4,264,570, which issued on December 25, 2012, and covers retail and on-line store featuring food and beverage products.

(26) Plaintiff duly registered EDEN as a trademark in the USPTO under Registration No. 4,272,393, which issued on January 8, 2013, and covers the following products:

- processed beans; processed fruits; processed tomatoes and crackers; entrees and side dishes consisting primarily of rice and beans.

(27) Plaintiff duly registered EDEN as a trademark in the USPTO under Registration No. 4,431,041, which issued on November 12, 2013, and covers the following products:

- EDEN for tooth powder; dietary food supplements and nutritional supplement concentrates; sushi mats; processed vegetables; chili; processed mushrooms; raisins; tofu; vegetable based food beverages; prepared entrees consisting primarily of beans with rice and other side dishes; Umeboshi plum paste; grain based food beverages; natural food sweeteners; arrowroot for use as a food thickener; rice; Ponzu sauce; prepared entrees consisting primarily of rice with beans and other side dishes; edible spices; concentrates for making non-alcoholic beverages; and cooking wine.

(28) Registration Nos. 1,452,337, 1,862,634, 2,229,053, 2,272,652, 2,360,206, 2,503,977, 2,977,773, 3,071,337, 3,102,575, 4,264,570, 4,272,393 and 4,431,041, are *prima facie* evidence of the validity and exclusive right to use of the mark EDEN, alone and in combination with other words and/or designs, and are constructive notice of ownership thereof, all as provided by §§ 7(b) and 22 of the Federal Trademark Act, 15 U.S.C. §§ 1057(b) and 1072. As the right to use the mark EDEN, alone and in combination with other word and designs, has become incontestable, Registration Nos. 1,452,337, 1,862,634, 2,229,053, 2,272,652, 2,360,206, 2,503,977, 2,977,773, 3,071,337, 3,102,575, 4,264,570, 4,272,393 and 4,431,041 are conclusive evidence of Plaintiff's exclusive right to use the marks shown therein in commerce as provided by §§ 15 and 33(b) of the Federal Trademark Act, 15 U.S.C. §§ 1065 and 1115(b). True copies of Registration Nos. 1,452,337, 1,862,634, 2,229,053, 2,272,652, 2,360,206, 2,503,977, 2,977,773, 3,071,337, 3,102,575, 4,264,570, 4,272,393 and 4,431,041 are attached hereto as Exhibit A, and made a part hereof.

(29) Notwithstanding Plaintiff's well-known and prior established rights in the mark EDEN for food and beverage products, Defendant has engaged in the advertising, promotion, distribution, offering for sale, and sale of a variety of food and beverage products under the trademark EDEN shown below in the State of Michigan and interstate commerce:

EDEN
· GOURMET ·

Defendant uses the trademark EDEN alone and in combination with other words and/or a designs; however, the EDEN formative is typically the most prominent element of the trademark.

(30) Defendant markets and sells a variety of food and beverage products, including "Classic Syrups" (*e.g.*, French vanilla, caramel, hazelnut, Irish cream, mocha, almond and cinnamon), "Fun and Fruity Flavored Syrups" (*e.g.*, blue curaco, blueberry, honey, kiwi, mango, peach, raspberry and strawberry), "Sugar Free Syrups" (*e.g.*, sugar free caramel and sugar free vanilla), "Functional Syrups" (*e.g.*, alert, energy and immune), and "Shakeable Toppings" (*e.g.*, French vanilla, mini marshmallows, cookies and cream, cinnamon and chocolate. Product packaging examples for certain of the foregoing products, as displayed on Defendant's website, are included as Exhibit B.

(31) The parties' products are closely related and move through the same and/or closely related channels of trade to the same or closely similar classes of purchasers.

(32) Defendant's product offerings employing the EDEN trademark can be found at <www.edensyrups.com>. Defendant's products employing the EDEN trademark are also offered through <www.sunnyskyproducts.com>.

(33) True copies of the packaging of one of Defendant's food products sold under the mark EDEN, which was purchased at a retail location in the State of Michigan, is attached hereto as Exhibit C.

(34) Had Defendant performed any kind of trademark search prior to the branding of its products, or at any time thereafter, it would have discovered Plaintiff's numerous, long-standing federal trademark registrations.

(35) Defendant's use of the trademark EDEN in the manner hereinabove alleged is likely to cause the public to believe, contrary to fact, that Defendant's food and beverage

products are in some way sponsored or approved by, or are otherwise affiliated or connected with, Plaintiff. Defendant's use of the trademark EDEN accordingly infringes Plaintiff's rights in the mark EDEN, alone and in combination with other words and designs, under § 32(1) of the Federal Trademark Act, 15 U.S.C. § 1114(1), and at common law.

(36) Unless enjoined by this Court, Defendant will continue to infringe Plaintiff's trademark EDEN, thereby deceiving the public and causing Plaintiff immediate and irreparable injury for which it has no adequate remedy at law.

COUNT II – UNFAIR COMPETITION

(37) As a cause of action and ground for relief, Plaintiff alleges that Defendant is engaged in acts of unfair competition under § 43(a)(1) of the Federal Trademark Act, 15 U.S.C. § 1125(a)(1), and at common law, and incorporates by reference ¶¶ (1) through (36) of the complaint as a part of this count.

(38) By reason of Plaintiff's prior adoption and use of the EDEN trademark, Plaintiff's rights in and to that name are superior to and supersede Defendant's right to use "EDEN" as a designation for identical and closely-related food and beverage products.

(39) Defendant's use of the trademark EDEN in connection with food and beverage products in the manner hereinabove alleged constitutes a false designation of origin within the meaning of § 43(a)(1) of the Federal Trademark Act, 15 U.S.C. § 1125(a)(1).

(40) Defendant's acts as stated herein deceive and tend to deceive the public into believing, falsely, that Defendant's goods are those of, are sponsored or approved by, or are in some other way connected with Plaintiff, all to the irreparable injury of Plaintiff's trade and goodwill and to the injury of the public.

(41) Unless enjoined by this Court, Defendant will continue said acts of unfair

competition, thereby causing Plaintiff immediate and irreparable injury for which it has no adequate remedy at law.

COUNT III - TRADE NAME INFRINGEMENT

(42) As a cause of action and ground for relief, Plaintiff alleges that Defendant is engaged in trade name infringement at common law and incorporates by reference ¶¶ (1) through (41) of the complaint as part of this count.

(43) Plaintiff has continuously used EDEN FOODS as a trade name in connection with food and beverage products since at least as early as 1967, long prior to the acts of Defendant complained of herein.

(44) As a result of the substantial and extensive advertising and sales of food and beverage products under the trade name EDEN FOODS and Plaintiff's maintenance of premium quality standards relating thereto, said trade name has become famous and is well and favorably known as a famous and distinctive indication of origin of the food and beverage products sold by Plaintiff and as a symbol of the highest quality products.

(45) Defendant's use of the trademark EDEN in the manner hereinabove alleged is likely to cause the public to believe, contrary to fact, that Defendant and its products sold under said trademark are in some way sponsored or approved by, or are otherwise affiliated or connected with, Plaintiff and thus infringes the trade name EDEN FOODS at common law.

(46) Unless enjoined by this Court, Defendant will continue to infringe the trade name EDEN FOODS, thereby deceiving the public and causing Plaintiff immediate and irreparable damage for which it has no adequate remedy at law.

COUNT IV - TRADEMARK DILUTION

(47) As a cause of action and ground for relief, Plaintiff alleges that Defendant has engaged in acts of trademark dilution by tarnishment under § 43(c)(2)(C) of the Federal Trademark Act, 15 U.S.C. §1125(c)(2)(C), and incorporates by reference ¶¶ (1) through (46) of the complaint as part of this count.

(48) As a result of Plaintiff's extensive and substantial advertising and sales of food and beverage products under the trademark EDEN, alone and in combination with other words and designs, and the maintenance of the highest premium quality standards relating thereto, said trademark mark is well and favorably known to the general public throughout the United States as a distinctive indication of origin and had become a famous mark within the meaning of § 43(c)(1) of the Federal Trademark Act, 15 U.S.C. § 1125(c)(1), long prior to Defendant's first use of the trademark EDEN complained of herein.

(49) On information and belief, Defendant's products are not organic and the production and sale of inorganic and impure products under the EDEN trademark will tarnish the food and beverage products sold by Plaintiff under the EDEN trademark.

(50) Defendant's use of the trademark EDEN is likely to tarnish the distinctive quality of, and the reputation and goodwill symbolized by, Plaintiff's famous trademark EDEN within the meaning of § 43(c)(2)(C) of the Federal Trademark Act, 15 U.S.C. § 1125(c)(2)(C).

(51) Unless enjoined by this Court, Defendant is likely to continue said acts of trademark dilution, thereby causing Plaintiff immediate and irreparable damage for which it has no adequate remedy at law.

WHEREFORE, Plaintiffs respectfully pray that:

(1) The Court enter judgment that Defendant has infringed the trademark EDEN

under § 32(1) of the Federal Trademark Act, 15 U.S.C. § 1114(1), and at common law; has engaged in acts of unfair competition in violation of § 43(a)(1) of the Federal Trademark Act, 15 U.S.C. § 1125(a)(1), and the common law; has infringed the trade name EDEN FOODS at common law; and has tarnished the distinctive qualities of the famous trademark EDEN under § 43(c)(2)(C) of the Federal Trademark Act, 15 U.S.C. § 1125(c)(2)(C); and has otherwise injured Plaintiff's business reputation by using the trademark EDEN QUALITY PRODUCT & Design in the manner complained of herein.

(2) Defendant and each of its respective agents, employees, servants, attorneys, successors, and assigns, and all others in privity or acting in concert therewith, be preliminarily and permanently enjoined from:

(a) Using any trademark, service mark, corporate name, domain name or other commercial indication of origin that consists of or incorporates the mark EDEN or any other trademark, service mark, trade name, corporate name, domain name and/or other commercial indication of origin that is confusingly similar to EDEN;

(b) Competing unfairly with Plaintiff or otherwise injuring Plaintiff's business reputation in the manner complained of herein; and

(c) Otherwise infringing the trademark EDEN and the trade name EDEN FOODS and/or tarnishing the distinctive quality of the famous mark EDEN.

(3) Pursuant to § 36 of the Federal Trademark Act, 15 U.S.C. § 1118, Defendant be directed to deliver up for destruction or other disposition by Plaintiff all advertisements, brochures, labels, packaging, signs, prints, decals, business cards, order forms, and all other

materials in the possession, custody, or under the control of Defendant that bear or are labeled with the trademark EDEN, alone and in combination with other words.

(4) Pursuant to § 35(a) of the Federal Trademark Act, 15 U.S.C. § 1117(a), as amended, Defendant be required to pay to Plaintiff the damages which Plaintiff has sustained as a result of Defendant's acts of trademark infringement, unfair competition and trademark dilution.

(5) Pursuant to § 35(a) of the Federal Trademark Act, 15 U.S.C. § 1117(a), as amended, Defendant be required in equity to account for and pay to Plaintiff the profits Defendant has realized which are attributable to its acts of trademark infringement, unfair competition and trademark dilution.

(6) Defendant be required to pay to Plaintiff both the costs of this action and, in view of the exceptional nature of this case, reasonable attorneys' fees in accordance with § 35 of the Federal Trademark Act, 15 U.S.C. § 1117.

(7) Plaintiff be granted such other, different and additional relief as this Court deems equitable and proper.

JURY DEMAND

In accordance with Rule 38 Fed. R. Civ. P., Plaintiff hereby requests a trial by jury of all issues so triable.

Respectfully submitted,

SOBLE ROWE KRICHBAUM LLP

Date: February 3, 2017

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